

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2004

—————
A N A C T

RELATING TO WORKERS' COMPENSATION -- PROCEDURE

Introduced By: Representative Thomas Winfield

Date Introduced: February 12, 2004

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-29-2, 28-29-17 and 28-29-19 of the General Laws in Chapter
2 28-29 entitled "Workers' Compensation -- General Provisions" are hereby amended to read as
3 follows:

4 **28-29-2. Definitions.** -- In chapters 29 -- 38 of this title, unless the context otherwise
5 requires:

6 (1) "Department" means the department of labor and training.

7 (2) "Director" means the director of labor and training or his or her designee unless
8 specifically stated otherwise.

9 (3) (i) "Earnings capacity" means the weekly straight time earnings which an employee
10 could receive if the employee accepted an actual offer of suitable alternative employment.
11 Earnings capacity can also be established by the court based on evidence of ability to earn,
12 including, but not limited to, a determination of the degree of functional impairment and/or
13 disability, that an employee is capable of employment. The court may, in its discretion, take into
14 consideration the performance of the employee's duty to actively seek employment in scheduling
15 the implementation of the reduction. The employer need not identify particular employment
16 before the court can direct an earnings capacity adjustment. In the event that an employee returns
17 to light duty employment while partially disabled, an earnings capacity shall not be set based
18 upon actual wages earned until the employee has successfully worked at light duty for a period of
19 at least thirteen (13) weeks.

1 (ii) As used under the provisions of this title, "functional impairment" means an
2 anatomical or functional abnormality existing after the date of maximum medical improvement as
3 determined by a medically or scientifically demonstrable finding and based upon the most recent
4 edition of the American Medical Association's Guide to the Evaluation of Permanent Impairment
5 or comparable publications of the American Medical Association.

6 (iii) In the event that an employee returns to employment at an average weekly wage
7 equal to the employee's pre-injury earnings exclusive of overtime, the employee will be presumed
8 to have regained his/her earning capacity.

9 (4) "Employee" means any person who has entered into the employment of or works
10 under contract of service or apprenticeship with any employer, except that in the case of a city or
11 town other than the city of Providence it shall only mean that class or those classes of employees
12 as may be designated by a city, town, or regional school district in a manner provided in this
13 chapter to receive compensation under chapters 29 -- 38 of this title. Any person employed by the
14 state of Rhode Island, except for sworn employees of the Rhode Island State Police, who is
15 otherwise entitled to the benefits of chapter 45-19 shall be subject to the provisions of chapters
16 29-38 of title 28 for all case management procedures and dispute resolution for all benefits. It
17 does not include any partner, [general or limited, or any partner in a registered limited liability](#)
18 [partnership, or any nonmanager member of a limited liability company](#), sole proprietor,
19 independent contractor, or a person whose employment is of a casual nature, and who is
20 employed other than for the purpose of the employer's trade or business, or a person whose
21 services are voluntary or who performs charitable acts, nor shall it include the members of the
22 regularly organized fire and police departments of any town or city. Whenever a contractor has
23 contracted with the state, a city, town, or regional school district any person employed by that
24 contractor in work under contract shall not be deemed an employee of the state, city, town, or
25 regional school district as the case may be. Any person who on or after January 1, 1999, was an
26 employee and became a corporate officer shall remain an employee, for purposes of these
27 chapters, unless and until coverage under this act is waived pursuant to subsection 28-29-8(b) or
28 section 28-29-17. Any person who is appointed a corporate officer between January 1, 1999 and
29 December 31, 2001, and was not previously an employee of the corporation, will not be
30 considered an employee, for purposes of these chapters, unless that corporate officer has filed a
31 notice pursuant to section 28-29-19(b). In the case of a person whose services are voluntary or
32 who performs charitable acts, any benefit received, in the form of monetary remuneration or
33 otherwise, shall be reportable to the appropriate taxation authority but shall not be deemed to be
34 wages earned under contract of hire for purposes of qualifying for benefits under chapters 29 --

1 38 of this title. Any reference to an employee who had been injured shall, where the employee is
2 dead, include a reference to his or her dependents as defined in this section, or to his or her legal
3 representatives, or, where he or she is a minor or incompetent, to his or her conservator or
4 guardian. A "seasonal occupation" means those occupations in which work is performed on a
5 seasonal basis of not more than sixteen (16) weeks.

6 (5) "Employer" includes any person, partnership, corporation, or voluntary association,
7 and the legal representative of a deceased employer; it includes the state, and the city of
8 Providence. It also includes each city, town, and regional school district in the state that votes or
9 accepts the provisions of chapters 29 -- 38 of this title in the manner provided in this chapter.

10 (6) "General or special employer":

11 (i) "General employer" includes but is not limited to temporary help companies and
12 employee leasing companies and means a person who for consideration and as the regular course
13 of its business supplies an employee with or without vehicle to another person.

14 (ii) "Special employer" means a person who contracts for services with a general
15 employer for the use of an employee, a vehicle, or both.

16 (iii) Whenever there is a general employer and special employer wherein the general
17 employer supplies to the special employer an employee and the general employer pays or is
18 obligated to pay the wages or salaries of the supplied employee, then, notwithstanding the fact
19 that direction and control is in the special employer and not the general employer, the general
20 employer, if it is subject to the provisions of the Workers' Compensation Act or has accepted that
21 Act, shall be deemed to be the employer as set forth in subdivision (5) of this section and both the
22 general and special employer shall be the employer for purposes of sections 28-29-17 and 28-29-
23 18.

24 (iv) Effective January 1, 2003, whenever a general employer enters into a contract or
25 arrangement with a special employer to supply an employee or employees for work, the special
26 employer shall require written documentation evidencing that the general employer carries
27 workers' compensation insurance with no indebtedness for its employees for the term of the
28 contract or arrangement. In the event that the special employer fails to obtain the written
29 documentation from the general employer, the special employer is deemed to be the employer
30 pursuant to the provisions of this section.

31 (7) (i) "Injury" means and refers to personal injury to an employee arising out of and in
32 the course of his or her employment, connected and referable to the employment.

33 (ii) An injury to an employee while voluntarily participating in a private, group, or
34 employer-sponsored carpool, vanpool, commuter bus service, or other rideshare program, having

1 as its sole purpose the mass transportation of employees to and from work shall not be deemed to
2 have arisen out of and in the course of employment. Nothing in the foregoing provision shall be
3 held to deny benefits under chapters 29 -- 38 and chapter 47 of this title to employees such as
4 drivers, mechanics, and others who receive remuneration for their participation in the rideshare
5 program. Provided, that the foregoing provision shall not bar the right of an employee to recover
6 against an employer and/or driver for tortious misconduct.

7 (8) "Maximum medical improvement" means a point in time when any medically
8 determinable physical or mental impairment as a result of injury has become stable and when no
9 further treatment is reasonably expected to materially improve the condition. Neither the need for
10 future medical maintenance nor the possibility of improvement or deterioration resulting from the
11 passage of time and not from the ordinary course of the disabling condition, nor the continuation
12 of a pre-existing condition precludes a finding of maximum medical improvement. A finding of
13 maximum medical improvement by the workers' compensation court may be reviewed only
14 where it is established that an employee's condition has substantially deteriorated or improved.

15 (9) "Physician" means medical doctor, surgeon, dentist, licensed psychologist,
16 chiropractor, osteopath, podiatrist, or optometrist, as the case may be.

17 (10) "Suitable alternative employment" means employment or an actual offer of
18 employment which the employee is physically able to perform and will not exacerbate the
19 employee's health condition and which bears a reasonable relationship to the employee's
20 qualifications, background, education, and training. The employee's age alone shall not be
21 considered in determining the suitability of the alternative employment.

22 (11) "Independent contractor" means a person who has filed a notice of designation as
23 independent contractor with the director pursuant to section 28-29-17.1 or as otherwise found by
24 the workers' compensation court.

25 **28-29-17. Waiver of common law rights -- Notice of claim of common law right. --**

26 An employee or corporate officer of an employer [or manager of a limited liability company](#)
27 subject to or who has elected to become subject to the provisions of chapters 29 -- 38 of this title
28 as provided in section 28-29-8 shall be held to have waived his or her right of action at common
29 law to recover damages for personal injuries if he or she has not given his or her employer at the
30 time of the contract of hire or appointment notice in writing that he or she claims that right and
31 within ten (10) days after that has filed a copy of the notice with the director, or, if the contract of
32 hire or appointment was made before the employer became subject to or elected to become
33 subject to the provisions of those chapters, if the employee or corporate officer [or manager of a](#)
34 [limited liability company](#) shall not have given the notice and filed it with the director within ten

1 (10) days after the filing by the employer who is subject to or who has elected to become subject
2 to the provisions of those chapters of the written statement as provided. That waiver shall
3 continue in force for the term of one year, and after that, without further act on his or her part, for
4 successive terms of one year each, unless the employee or corporate officer or manager of a
5 limited liability company, at least sixty (60) days prior to the expiration of the first or any
6 succeeding year files with the director a notice in writing to the effect that he or she desires to
7 claim his or her right of action at common law and within ten (10) days thereafter gives notice of
8 this to his or her employer.

9 **28-29-19. Waiver of claim of common law rights.** -- (a) Any employee, or corporate
10 officer or manager of a limited liability company, or the parent or guardian of any minor
11 employee, who has given notice to the employer that he or she claimed his or her right of action
12 at common law may waive that claim by filing a notice in writing with the director and the
13 employer or his or her agent which shall take effect five (5) days after the filing with the director.

14 (b) Any person who is appointed a corporate officer between January 1, 1999 and
15 December 31, 2001 and was not previously an employee of the corporation may elect to become
16 subject to chapters 29 -- 38 of this title upon filing a notice in writing with the director which
17 notice takes effect five (5) days after the filing of his or her notice.

18 SECTION 2. Section 28-33-3 of the General Laws in Chapter 28-33 entitled "Workers'
19 Compensation -- Benefits" is hereby repealed.

20 ~~**28-33-3. Contingent attorneys' fees.** --- Contingent fees of attorneys for services under~~
21 ~~chapters 29 -- 38 of this title shall be subject to the approval of the workers' compensation court.~~

22 SECTION 3. Sections 28-33-17.3, 28-33-18.3, 28-33-25 and 28-33-25.1 of the General
23 Laws in Chapter 28-33 entitled "Workers' Compensation -- Benefits" are hereby amended to read
24 as follows:

25 **28-33-17.3. Fraud and abuse.** -- (a) (1) The workers' compensation court is authorized
26 and directed to impose sanctions and penalties necessary to maintain the integrity of and to
27 maintain the high standards of professional conduct in the workers' compensation system. All
28 pleadings related to proceedings under chapters 29 -- 38 of this title shall be considered an
29 attestation by counsel that valid grounds exist for the position taken and that the pleading is not
30 interposed for delay.

31 (2) If any judge determines that any proceedings have been brought, prosecuted, or
32 defended by an employer, insurer, or their counsel without reasonable grounds, then:

33 (i) The whole cost of the proceedings shall be assessed upon the employer, insurer, or
34 counsel, whoever is responsible; and

1 (ii) If a subsequent order requires that additional compensation be paid, a penalty of
2 double the amount of retroactive benefits ordered shall be paid to the employee and the penalty
3 shall not be included in any formula utilized to establish premium rates for workers'
4 compensation insurance.

5 (3) If any judge determines that any proceedings have been brought or defended by an
6 employee or his or her counsel without reasonable grounds, the whole cost of the proceedings
7 shall be assessed against the employee or counsel, whoever is responsible.

8 (4) The court shall determine whether an action or defense is frivolous or conduct giving
9 rise to the action or defense was unreasonable. Where the amount at issue is less than the actual
10 attorneys' fees of the parties combined, the court shall exercise particular vigilance. Nothing in
11 this subsection, however, is intended to discourage prompt payment in full of all amounts
12 required to be paid.

13 (5) The appropriate body with professional disciplinary authority over the attorney shall
14 be notified of the action.

15 (b) (1) It is unlawful to do any of the following:

16 (i) Make or cause to be made any knowingly false or fraudulent material statement or
17 material representation for the purpose of obtaining or denying any compensation;

18 (ii) Present or cause to be presented any knowingly false or fraudulent written or oral
19 material statement in support of, or in opposition to, any claim for compensation or petition
20 regarding the continuation, termination, or modification of benefits;

21 (iii) Knowingly assist, aid and abet, solicit, or conspire with any person who engages in
22 an unlawful act under this section;

23 (iv) Make or cause to be made any knowingly false or fraudulent statements with regard
24 to entitlement to benefits with the intent to discourage an injured worker from claiming benefits
25 or pursuing a claim;

26 (v) Willfully misrepresent or fail to disclose any material fact in order to obtain workers'
27 compensation insurance at less than the proper rate for the insurance including, but not limited to,
28 intentionally misleading or failing to disclose information to an insurer regarding the appropriate
29 rate classification of an employee;

30 (vi) Willfully fail to provide a lower rate adjustment favorable to an employer as
31 required by an approved experience rating plan or regulations promulgated by the insurance
32 commissioners;

33 (vii) Willfully fail to report or provide false or misleading information regarding
34 ownership changes as required by an approved experience rating plan or regulations promulgated

1 by the insurance commissioner; or

2 (viii) Knowingly assist, aid and abet, solicit or conspire to coerce an employee to
3 willfully misrepresent an employee's status as a president, one vice president, secretary and/or
4 treasurer of a corporation or as a member of a limited liability company or as a partner in a
5 general partnership, limited partnership or a limited liability partnership or as an independent
6 contractor for the purpose of avoiding the inclusion of that or other employees in a workers'
7 compensation insurance application, renewal or both.

8 (2) For the purposes of this section, "Statement" includes, but is not limited to, any
9 endorsement of a benefit check, application for insurance coverage, oral or written statement,
10 proof of injury, bill for services, diagnosis, prescription, hospital or provider records, x-rays, test
11 results, or other documentation offered as proof of, or in the absence of, a loss, injury, or expense.

12 (3) If it is determined that any person concealed or knowingly failed to disclose that
13 which is required by law to be revealed, knowingly gave or used perjured testimony or false
14 evidence, knowingly made a false statement of fact, participated in the creation or presentation of
15 evidence which he or she knows to be false, or otherwise engaged in conduct in violation of
16 subdivision (1) of this subsection, that person shall be subject in criminal proceedings to a fine
17 and/or penalty not exceeding fifty thousand dollars (\$50,000), or double the value of the fraud,
18 whichever is greater, or by imprisonment up to five (5) years in state prison or both.

19 (4) There shall be a general amnesty until July 1, 1992 for any person receiving
20 compensation under chapters 29 -- 38 of this title, to the extent compensation has been voluntarily
21 reduced or relinquished by the employee prior to that date.

22 (c) The director of labor and training shall establish a form, in consultation with the
23 attorney general, to be sent to all workers who are presently receiving benefits and those for
24 whom first reports of injury are filed in the future which shall give the employee notice that the
25 endorsement of a benefit check sent pursuant to section 28-35-39 is the employee's affirmation
26 that he or she is qualified to receive benefits under the Workers' Compensation Act. The insurers
27 and self-insured employers are directed to send the form to all workers receiving benefits.

28 (d) Any employer, or in any case where the employer is a corporation, the president, vice
29 president, secretary, and treasurer of the corporation, or in any case where the employer is a
30 limited liability company, the managers, or in any case where the employer is a general
31 partnership, a limited partnership or a limited liability partnership, the partners, that is found to
32 have violated this section or section 28-36-15, shall be guilty of a felony for failure to secure and
33 maintain compensation, and upon conviction, shall be subject to imprisonment of up to two (2)
34 years, a fine not exceeding ten thousand dollars (\$10,000), or both. In any case where the

1 employer is a corporation, the president, vice president, secretary, and treasurer of the
2 corporation, shall be severally liable for the fine or subject to imprisonment- , or both. In any
3 case where the employer is a limited liability company, the managers shall be severally liable for
4 the fine or subject to imprisonment, or both. In any case where the employer is a partnership, or a
5 general partnership, or a limited partnership or a limited liability partnership, the partners shall be
6 severally liable for the fine or subject to imprisonment, or both.

7 **28-33-18.3. Continuation of benefits -- Partial incapacity. --** (a) (1) For all injuries
8 occurring on or after September 1, 1990, in those cases where the employee has received a notice
9 of intention to terminate partial incapacity benefits pursuant to section 28-33-18, the employee or
10 his or her duly authorized representative may file with the workers' compensation court a petition
11 for continuation of benefits on forms prescribed by the workers' compensation court. In any
12 proceeding before the workers' compensation court on a petition for continuation of partial
13 incapacity benefits, where the employee demonstrates by a fair preponderance of the evidence
14 that his or her partial incapacity poses a material hindrance to obtaining employment suitable to
15 his or her limitation, partial incapacity benefits shall continue. For injuries on and after July 1,
16 ~~2001~~ 2003, "material hindrance" is defined to include only compensable injuries causing a greater
17 than sixty-five percent (65%) degree of functional impairment and/or disability. Any period of
18 time for which the employee has received benefits for total incapacity shall not be included in the
19 calculation of the three hundred and twelve (312) week period.

20 (2) The provisions of this subsection apply to all injuries from Sept. 1, 1990, to July 1,
21 ~~2001~~ 2003.

22 (b) (1) Where any employee's incapacity is partial and has extended for more than three
23 hundred and twelve (312) weeks and the employee has proved an entitlement to continued
24 benefits under subsection (a) of this section, payments made to these incapacitated employees
25 shall be increased annually on the tenth (10th) day of May thereafter so long as the employee
26 remains incapacitated. The increase shall be by an amount equal to the total percentage increase
27 in the annual consumer price index, United States city average for urban wage earners and
28 clerical workers, as formulated and computed by the bureau of labor statistics of the United States
29 Department of Labor for the period of March 1 to February 28 each year.

30 (2) "Index" as used in this section refers to the consumer price index, United States city
31 average for urban wage earners and clerical workers, as that index was formulated and computed
32 by the Bureau of Labor Statistics of the United States Department of Labor.

33 (3) The annual increase shall be based upon the percentage increase, if any, in the
34 consumer price index for the month of a given year, over the index for February, the previous

1 year. Thereafter, increases shall be made on May 10 annually, based upon the percentage
2 increase, if any, in the consumer price index for the period of March 1 to February 28.

3 (4) The computations in this section shall be made by the director of labor and training
4 and promulgated to insurers and employers making payments required by this section. Increases
5 shall be paid by insurers and employers without further order of the court. If payment payable
6 under this section is not mailed within fourteen (14) days after the employer or insurer has been
7 notified by publication in a newspaper of general circulation in the state it becomes due, there
8 shall be added to the unpaid payment an amount equal to twenty percent (20%) of it, to be paid at
9 the same time as but in addition to the payment.

10 (5) This section applies only to payment of weekly indemnity benefits to employees as
11 described in subdivision (1) of this subsection, and does not apply to specific compensation
12 payments for loss of use or disfigurement or payment of dependency benefits or any other
13 benefits payable under the Workers' Compensation Act.

14 (c) No petitions for commutation shall be allowed or entertained in those cases where an
15 employee is receiving benefits pursuant to this section.

16 **28-33-25. Settlement for lump sum or structured-type payment.** -- (a) (1) In case
17 payments have continued for not less than six (6) months, the parties may petition the workers'
18 compensation court for an order approving a settlement of the future liability for a lump sum or
19 structured-type periodic payment over a period of time.

20 (2) (i) In considering the petition, a judge shall give due weight to the fact that it is the
21 policy of this chapter that compensation be paid weekly.

22 (ii) The petition shall be considered by a judge of the court and may be granted where it
23 is shown to the satisfaction of the court that the payment of a lump sum or structured-type
24 payment in lieu of future weekly payments will be in the best interest of all parties including the
25 employee, employer, insurance carrier, and where applicable, the workers' compensation
26 administrative fund and the center for Medicare and Medicaid services (CMS) as their interests
27 may appear. Any proposed settlement that exceeds one hundred four (104) weeks of
28 compensation for partial incapacity may be rejected by the chief judge in his or her discretion.
29 The employee shall be entitled to a finding amortizing the net settlement over his or her life
30 expectancy.

31 (iii) In determining whether the settlement is in the best interest of all parties, the judge
32 may refer the employee for a rehabilitation evaluation pursuant to the provisions of section 28-33-
33 41.

34 (3) Upon payment, the employer and insurer shall be entitled to a duly executed release,

1 which fully and finally absolves and discharges the employer and insurer from any and all
2 liability arising out of the injury.

3 (b) The provisions of this section shall be strictly construed and all hearings for
4 commutation shall be conducted in open session.

5 (c) No case may be settled to a lump sum or structured-type periodic payment while the
6 Rhode Island temporary disability insurance fund and/or the department of social and
7 rehabilitative services has a claim for payments made under chapter 41 of this title unless
8 agreement is made to pay any claim from the lump sum or structured-type periodic payments.

9 (d) Attorneys' fees shall be fixed by the court, but in no event shall any attorney's fee for
10 representing an employee in connection with a petition brought pursuant to this section exceed a
11 sum equal to ~~fifteen~~ twenty percent (~~15%~~) (20%) of the lump sum or ~~fifteen~~ twenty percent (~~15%~~)
12 (20%) of the structured-type periodic payment reduced to present day value.

13 (e) No case shall be settled for a lump sum or structured-type periodic payment unless it
14 is placed upon the record in open session, that the employer, if insured, has been advised by the
15 insurer or its agent of the potential effect of the settlement on its workers' compensation premium,
16 and has the opportunity to appear and state its disapproval of the settlement.

17 (f) Settlements must be paid within fourteen (14) days of entry of an order to pay or the
18 date(s) upon which payment(s) is/are due pursuant to a court order, and a penalty of one hundred
19 dollars (\$100) shall be assessed for every day payment is delinquent.

20 **28-33-25.1. Settlement of disputed cases.** -- Notwithstanding the provisions of sections
21 28-33-25 and 28-33-26, in cases where liability of the employer for payment of workers'
22 compensation benefits has not been finally established, the parties may submit a settlement
23 proposal to the workers' compensation court for approval. If, upon consideration, a judge of the
24 workers' compensation court deems the settlement proposal to be in the best interest of the
25 parties, including the employee, employer, insurance carrier, and where applicable the center for
26 Medicare and Medicaid services (CMS) as their interests may apply, the judge may approve the
27 settlement. Payment by the employer or insurer shall not be deemed to be the payment of
28 workers' compensation benefits, but shall be considered a compromise payment of a disputed
29 claim. The settlement and payment pursuant to it shall not be subject to liens set forth in section
30 28-33-27(b). Upon payment, the employer and insurer shall be entitled to a duly executed release
31 that fully and finally absolves and discharges the employer and insurer from any and all liability
32 arising out of the claimed injury.

33 SECTION 4. Section 28-36-15 of the General Laws in Chapter 28-36 entitled "Workers'
34 Compensation - Insurance" is hereby amended to read as follows:

1 **28-36-15. Penalty for failure to secure compensation -- Personal liability of**
2 **corporate officers.** -- (a) Any employer required to secure the payment of compensation under
3 chapters 29 -- 38 of this title who knowingly fails to secure that compensation shall be guilty of a
4 felony and shall be subject to imprisonment for up to two (2) years. In addition to the foregoing,
5 the employer shall be subject to a civil penalty punished by a fine of not less than five hundred
6 dollars (\$500) and not more than one thousand dollars (\$1,000) for each day of noncompliance
7 with the requirements of this title. The director shall institute any and all reasonable measures to
8 comprehensively monitor, investigate, and otherwise discover all employer noncompliance with
9 this section and shall establish rules and regulations governing these measures. Each day shall
10 constitute a separate and distinct offense for calculation of the penalty. Where that employer is a
11 corporation or a limited liability company or general or limited partnership, the president, vice
12 president, secretary, and treasurer of the corporation, or member or manager of a limited liability
13 company or general or limited partner in a registered limited liability partnership shall be also
14 severally liable for the fine, penalty or imprisonment as provided in this section for the failure of
15 that corporation to secure the payment of compensation. The president, vice president, secretary,
16 and treasurer or member or manager or general or limited partner shall be severally personally
17 liable, jointly with the corporation or company or partnership, for any compensation or other
18 benefit which may accrue under those chapters in respect to any injury which may occur to any
19 employee of that corporation while it fails to secure the payment of compensation as required by
20 those chapters. All criminal actions for any violation of this section shall be prosecuted by the
21 attorney general. The attorney general shall prosecute actions to enforce the payment of penalties
22 and fines at the request of the director. The workers' compensation court shall have jurisdiction
23 over all civil actions filed pursuant to this section.

24 (b) (1) As soon as practicable after the director receives notice of noncompliance under
25 this section, the director shall determine whether cause exists for the imposition of a civil penalty.
26 Unless the director determines that the noncompliance was unintentional or the result of a clerical
27 error and subject to the administrative proceedings under subsection (c) of this section, the
28 director shall commence an action in the workers' compensation court to assess a civil penalty
29 against the employer as set forth in subsection (a) of this section and shall refer the matter to the
30 attorney general for prosecution of criminal charges.

31 (2) The director shall bring a civil action in the workers' compensation court to collect all
32 payments and penalties ordered and not paid. All civil actions for any violations of this chapter or
33 of any of the rules or regulations promulgated by the director, or for the collection of payments in
34 accordance with section 28-37-13, 28-33-17.3(a)(2) or 28-33-17.3(a)(3) or civil penalties under

1 this chapter, shall be prosecuted by any qualified member of the Rhode Island bar whom the
2 director may designate, in the name of the director, and the director is exempt from giving surety
3 for costs in any proceedings.

4 (c) In the case of unintentional noncompliance or noncompliance resulting from clerical
5 error where the uninsured period is less than one year from the date of discovery and there were
6 no employees injured during the uninsured period and the employer has not been subject to any
7 other findings of noncompliance with these chapters, the director shall assess an administrative
8 penalty of not less than the estimated annual workers' compensation insurance premium for that
9 employer and not more than triple that amount. Any party has the right to appeal the orders of the
10 director. Such appeal shall be to the workers' compensation court in the first instance and
11 thereafter from the workers' compensation court to the Rhode Island supreme court in accordance
12 with section 28-35-30.

13 (d) The director shall collect all payments under this chapter under the rules and
14 regulations that may be set forth by the director. All fines collected pursuant to this section shall
15 be deposited to a restricted receipt account to be administered by the director of the department of
16 labor and training in his or her sole discretion to carry out chapters 29 -- 38 of this title.

17 (e) (1) In that the operation of a commercial enterprise without the required workers'
18 compensation insurance is a crime and creates a clear and present danger of irreparable harm to
19 employees who are injured while the employer is uninsured, the director shall suspend the
20 operation of the business immediately and until workers' compensation and employers' liability
21 insurance is secured consistent with these chapters. The director shall lift the suspension upon
22 receipt of satisfactory proof of insurance and evidence sufficient to satisfy the director that the
23 employer is in full compliance with these chapters. Any party has the right to appeal the
24 suspension to the workers' compensation court where the matter shall proceed pursuant to the
25 workers' compensation court rules of procedure.

26 (2) In the event that the employer shall fail to comply with the director's order of
27 suspension, the director may apply immediately to the workers' compensation court for an order
28 directing the employer to comply with the director's prior orders.

29 (3) Actions filed with the workers' compensation court pursuant to this section shall not
30 be subject to a pretrial conference in accordance with section 28-35-20 but shall be assigned
31 consistent with the workers' compensation court rules of procedure.

32 (f) Interest shall accrue on unpaid penalties during the pendency of any appeal at the rate
33 per annum provided in section 9-21-10.

34 SECTION 5. Section 42-35-18 of the General Laws in Chapter 42-35 entitled

1 "Administrative Procedures" is hereby amended to read as follows:

2 **42-35-18. Effective date of chapter -- Scope of application and exemptions.** -- (a) This
3 chapter shall take effect upon January 1, 1964, and thereupon all acts and parts of acts
4 inconsistent herewith shall stand repealed, provided, however, that except as to proceedings
5 pending on June 30, 1963, this chapter shall apply to all agencies and agency proceedings not
6 expressly exempted.

7 (b) None of the provisions of this chapter shall apply to the following sections and
8 chapters:

- 9 (1) Section 16-32-10 (University of Rhode Island);
- 10 (2) Chapter 41 of title 16 (New England Higher Education Compact);
- 11 (3) Section 16-33-6 (Rhode Island College);
- 12 (4) Chapter 16 of title 23 (Health Facilities Construction Act);
- 13 (5) Chapter 8 of title 20 (Atlantic States Marine Fisheries Compact);
- 14 (6) ~~Chapter 29 of title 28 (Workers' Compensation — General Provisions);~~
- 15 (7) ~~Chapter 30 of title 28 (Workers' Compensation Commission);~~
- 16 (8) ~~Chapter 31 of title 28 (Workers' Compensation — State and Municipal Employees);~~
- 17 (9) ~~Chapter 32 of title 28 (Workers' Compensation — Report of Injuries);~~
- 18 (10) ~~Chapter 33 of title 28 (Workers' Compensation — Benefits);~~
- 19 (11) ~~Chapter 34 of title 28 (Workers' Compensation — Occupational Diseases);~~
- 20 (12) ~~Chapter 36 of title 28 (Workers' Compensation — Insurance);~~
- 21 (13) ~~Chapter 35 of title 28 (Workers' Compensation — Procedure);~~
- 22 (14) ~~Chapter 37 of title 28 (Workers' Compensation — Second Injury Indemnity Fund);~~
- 23 (15) Chapter 38 of title 28 (Dr. John E. Donley Rehabilitation Center);
- 24 (16) [Deleted by P.L. 2002, ch. 316, section 1 and by P.L. 2002, ch. 387, section 1.]
- 25 (17) [Deleted by P.L. 2002, ch. 316, section 1 and by P.L. 2002, ch. 387, section 1.]
- 26 (18) [Deleted by P.L. 2002, ch. 316, section 1 and by P.L. 2002, ch. 387, section 1.]
- 27 (19) [Deleted by P.L. 2002, ch. 316, section 1 and by P.L. 2002, ch. 387, section 1.]
- 28 (20) [Deleted by P.L. 2002, ch. 316, section 1 and by P.L. 2002, ch. 387, section 1.]
- 29 (21) [Deleted by P.L. 2002, ch. 316, section 1 and by P.L. 2002, ch. 387, section 1.]
- 30 (22) Chapter 7 of title 17 (State Board of Elections);
- 31 (23) Chapter 16 of title 8 (Judicial Tenure and Discipline);
- 32 (24) Chapter 61 of title 42 (State Lottery);
- 33 (25) Chapter 59 of title 16 (Board of Governors for Higher Education);
- 34 (26) Chapter 60 of title 16 (Board of Regents for Elementary and Secondary Education);

- 1 (27) Chapter 24.4 of title 45 (Special Development Districts);
- 2 (28) Chapter 12 of title 35 (The University of Rhode Island Research Corporation).
- 3 (c) The provisions of sections 42-35-9, 42-35-10, 42-35-11, 42-35-12 and 42-35-13 shall
- 4 not apply to:
- 5 (1) Any and all acts, decisions, findings, or determinations by the board of review of the
- 6 department of labor and training or the director of the department of labor and training or his, her,
- 7 its or their duly authorized agents and to any and all procedures or hearings before and by the
- 8 director or board of review of the department of labor and training or his or her agents under the
- 9 provisions of chapters 39 -- 44 of title 28.
- 10 (2) Section 28-5-17 (Conciliation of charges of unlawful practices).
- 11 (3) Chapter 8 of title 13 (Parole).
- 12 (4) Any and all acts, decisions, findings or determinations by the administrator of the
- 13 division of motor vehicles or his or her duly authorized agent and to any and all procedures or
- 14 hearings before and by said administrator or his or her said agent under the provisions of chapters
- 15 10, 11, 31 to 33, inclusive, of title 31.
- 16 (5) Procedures of the board of examiners of hoisting engineers under chapter 26 of title
- 17 28.
- 18 [\(6\) Any and all acts, decisions, findings, or determinations made under authority from the](#)
- 19 [provisions of chapters 29 -- 38 of title 28, concerning workers' compensation administration,](#)
- 20 [procedure and benefits.](#)
- 21 SECTION 6. This act shall take effect upon passage.

=====
LC02137/SUB B
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO WORKERS' COMPENSATION -- PROCEDURE

1 This act would make changes to the workers' compensation laws concerning benefits,
2 procedures and insurance.

3 This act would take effect upon passage.

=====
LC02137/SUB B
=====

